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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,840	01/08/2001	Lars Bergholtz	027650-908	2930

21839 7590 10/28/2002

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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT	PAPER NUMBER
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1772

12

DATE MAILED: 10/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

09/700,840

BERGHOLTZ ET AL.

Examiner

Art Unit

Walter B Aughenbaugh

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Acknowledgement of Applicant's Amendments*

1. The amendments made in the specification, including the abstract, given on pages 1-2 of Applicant's Amendment (Paper #11) have been received and considered by Examiner.
2. The amendments made in Claims 1-3, 5 and 6 and given on pages 3 and 4 of Applicant's Amendment (Paper #11) have been received and considered by Examiner.

### *WITHDRAWN REJECTIONS*

3. The 35 U.S.C. 112 rejection of claims 1-3, 5 and 6 have been withdrawn due to Applicant's amendments and/or arguments in Paper #11.
4. The 35 U.S.C. 103 rejection of claims 1 and 2 over Akao et al. have been withdrawn due to Examiner's reconsideration of the Akao et al. reference.

### *REPEATED REJECTIONS*

5. The 35 U.S.C. 103 rejection of claims 3 and 4 over Akao et al. in view of Rosen is repeated for the reasons previously of record in Paper #7, pages 5-6.
6. The 35 U.S.C. 103 rejection of claims 5-7 over Akao et al. in view of admitted prior art of Applicants is repeated for the reasons previously of record in Paper #7, pages 6-7.
7. The 35 U.S.C. 103 rejection of claim 8 over Akao et al. in view of Johansson et al. is repeated for the reasons previously of record in Paper #7, pages 7-8.

### *NEW REJECTIONS*

#### *Claim Rejections - 35 USC § 112*

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The use of the work "type" in the phrase "single or multi-layer type" is indefinite.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Akao et al.

Akao et al. ('741) teach a packaging material with at least one light-shielding layer.

Figure 2a shows an example layer construction (Example I) for the invention disclosed by Akao et al. (col. 45, line 57 and col. 3, lines 3-11). Item 3a is a light-shielding polyolefin resin layer (col. 45, lines 63-64) and item 7a is a light-shielding thermoplastic resin layer (col. 46, line 13). Akao et al. identify carbon black as a particularly preferable light-shielding material (col. 16, lines 29-33). Carbon black is used in both layers 3a (col. 46, line 7) and 7a (col. 46, lines 25-26) of Example I. Akao et al. teach that there are different types of carbon blacks such as oil furnace carbon black, acetylene black and Ketjen carbon black (col. 16, lines 37-43). Akao et al. teaches the blending of acetylene black or Ketjen carbon black with oil furnace black (col. 16, lines 43-44). Examiner interprets the different types of carbon black to be minerals, since carbon black is fossil-fuel derived and is therefore considered a mineral as evidenced by *Hawley's Condensed Chemical Dictionary*; therefore, Akao et al. teach the blending of a carbon black with a mineral

Art Unit: 1772

as is claimed. Akao et al. teach that a suitable content of light-shielding material is 0.01 to 30 wt. % (col. 19, lines 26-31), and a content of 0.05 to 50 wt. % of light-shielding material is claimed for the flexible sheet 3a (col. 55, lines 60-62).

***ANSWERS TO APPLICANT'S ARGUMENTS***

12. Applicant's arguments in Paper #11 regarding the 35 U.S.C. 103 rejection of claims 1 and 2 over Akao et al. (Paper #7) in regard to the failure of Examiner to make a prima facie case of obviousness have been fully considered and this rejection, and all statements made in this rejection, have been withdrawn. A new 35 U.S.C. 103 rejection of claims 1 and 2 as anticipated by Akao et al. has been entered.
13. Applicant's arguments in Paper #11 regarding the 35 U.S.C. 103 rejection of claims 1 over Akao et al. (Paper #7) in regard to the limitation that the quantity of carbon black within the intermediate layer is about 0.04% to about 1% of the total weight of the intermediate layer have been fully considered but they are not persuasive because Akao et al. explicitly teach that a suitable content of light-shielding material is 0.01 to 30 wt. % (col. 19, lines 26-31), and a content of 0.05 to 50 wt. % of light-shielding material is claimed for the flexible sheet 3a (col. 55, lines 60-62). This range most certainly applies to carbon black as a light-shielding material, since Akao et al. teaches "in the case of carbon black... a suitable content is 0.05 to 20wt.%, preferably 0.1 to 10wt.% particularly preferably 0.2 to 7wt.% in total (col. 19, lines 31-34). The example given in Akao et al. that Applicant cites in which the furnace carbon black weight percentage is 5% is merely an example and does not supercede the teaching of Akao et al. that in the case of carbon black... a suitable content is 0.05 to 20wt.%, preferably 0.1 to 10wt.% particularly preferably 0.2 to 7wt.% in total (col. 19, lines 31-34).

Art Unit: 1772


*Conclusion*

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B Aughenbaugh whose telephone number is 703-305-4511. The examiner can normally be reached on Monday-Friday from 9:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 703-308-4251. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

wba  
10/21/02

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

10/28/02